HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1361 of 2003 (SS)

Suresh Narayan Pandey vs. Secretary, State Can Service Authority

Approved for reporting.

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~~Not approved for reporting~~

Date of decision. 6.11.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 1361 of 2003(SS)

Suresh Narayan Pandey son of Sri R.L. Pandey
Cooperative Cane Development Union Ltd.
Bazpur, Districtg Udham Singh Nagar …….. Petitioner

versus

1. Secretary, State Cane Service Authority U.P. Lucknow.
2. Cane Commissioner, U.P.
3. Asstt. Cane Commissioner, Udham Singh Nagar
4. Cooperative Cane Development Union Ltd. Bazpur. …… Respondents

Sri B.D. Upadhyay, Advocate for the petitioner
Sri Braham Singh Verma, Advocate for the respondents.

Dated:-6.11.2003

Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioner has prayed for a writ order or direction in the nature of certiorari for quashing the order dated 26.2.2002 passed by the respondent no.1, annexure 1 to the writ petition.

Briefly stated the facts giving rise to the present writ petition are that the petitioner was working as Special Secretary in the U.P. Cane Cooperative Societies Ltd. during the period 12.8.96 to 30.10.98 and 21.12.99 to 31.7.2001. The petitioner has alleged that in respect of

certain financial irregularities in the Cane Development Cooperative Societies Ltd. a complaint was lodged to the Cane Commissioner U.P. who entrusted inquiry to the Joint Cane Commissioner, Udham Singh Nagar. The Joint Cane Commissioner submitted his inquiry vide letter dated 28.9.2000. On the basis of said inquiry report one Sri Shishu Pal Singh Dhaka who was cashier in the Society was suspended an a disciplinary inquiry initiated against him. However, the petitioner has stated that no disciplinary proceeding was initiated against the petitioner. The petitioner retired after attaining the age of superannuation on 31.7.2001 and for the first time on 21.5.2001 the State Cane Service Authority U.P. has issued a show cause notice to the petitioner and the petitioner was held liable for a pecuniary loss of Rs. 19.21 lakh to the Society and he was asked to submit his explanation within 15 days. It was further stated that no copy of the alleged inquiry report was given to the petitioner along with the notice.

The petitioner, therefore, has requested the Secretary, State Cane Service Authority U.P. vide his letter dated 11.6.2001 and then a copy of the report was made available to him on 7.8.2001.

The petitioner has further stated that on 30.7.2001 one day before the date of retirement of the petitioner, the Assistant Cane Commissioner, Udham Singh Nagar, Uttaranchal had issued another

show cause notice to the petitioner and he was required to submit his explanation within 24 hours.

The petitioner after his retirement submitted applications on 21.11.2001 and 7.1.2002 for his retirement benefits but on 26.2.2002 respondent no.1 without conducting disciplinary proceedings against the petitioner passed an order that the petitioner was held liable proportionally for the pecuniary loss caused to the society.

The grievance of the petitioner is that respondent no.1 passed the order against the petitioner without initiating disciplinary proceedings against the petitioner under regulation 69 of U.P. Cane Cooperative Service Regulation, 1975. Since no inquiry was conducted against the petitioner, the punishment awarded under clause (e) of Regulation 69 is without jurisdiction.

Regulation 76 of the U.P. Cane Cooperative Service Regulation, 1975 provides for filing the appeal. The petitioner has already preferred an appeal under Regulation 76, the respondents are, therefore, directed to consider the aforesaid aspects of the matter while considering the appeal.

The counsel for the petitioner has also referred the judgment in 2001 (9) SCC 171 State of M.P. vs. Onkar Chand Sharma. The Apex Court has held as under:

"The question is whether disciplinary proceedings can be said to have been initiated by framing of the charge sheet or only after the charge sheet has been served on the delinquent employee. In our opinion, disciplinary proceedings can be held to have been initiated on the day the charge sheet has been prepared and signed by the competent authority."

It is well settled that if procedure has been prescribed by the statute the authority concerned has to follow the procedure in accordance with the regulations.

The Apex Court in the case Jagdish Prasad vs. Sachiv Zila Ganna Committee, 1986 UPLBEC 285 has held as under:

"This order is, therefore, per se, illegal arbitrary and in breach of the mandatory procedure prescribed by Regulation 68 of the U.P. Cane Cooperative Service Regulation, 1975. The order made is also in utter violation of the principles of audi alteram partem. The finding of the High Court that no disciplinary departmental proceedings have been taken against the petitioner appellant and the petitioner was afforded opportunity before his service was terminated are liable to set aside inasmuch as these findings were arrived at without at all considering the relevant materials produced before the Court."

In the light of aforesaid facts and circumstances the appellate authority shall decide the appeal of the petitioner within a period of six weeks from the date of filing of certified copy of the order.

With the aforesaid observations the writ petition is disposed of. No order as to costs.

06.11.2003 **(Rajesh Tandon, J.)**
Dhyani